

Adopted	Rejected
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COMMITTEE REPORT

YES:	9
NO:	0

MR. SPEAKER:

Your Committee on **Financial Institutions**, to which was referred House Bill 1646, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:

- 1 Replace the effective dates in SECTIONS 1 through 9 with
- 2 "[EFFECTIVE JANUARY 1, 2010]".
- 3 Replace the effective dates in SECTIONS 11 through 13 with
- 4 "[EFFECTIVE JANUARY 1, 2010]".
- 5 Replace the effective dates in SECTIONS 15 through 18 with
- 6 "[EFFECTIVE JANUARY 1, 2010]".
- 7 Page 3, line 32, delete "or" and insert "**and**".
- 8 Page 5, line 10, delete "institution (as defined in IC 23-19-1-2(5));"
- 9 and insert "**institution;**".
- 10 Page 5, line 12, delete "institution (as" and insert "**institution; and**".
- 11 Page 5, delete line 13.
- 12 Page 5, line 16, delete "subject to the supervision of" and insert
- 13 "**regulated by**".
- 14 Page 5, line 19, after "the" insert "**Nationwide**".
- 15 Page 6, between lines 21 and 22, begin a new paragraph and insert:

1 **"(u) As used in this chapter, "depository institution" has the**
 2 **meaning set forth in the Federal Deposit Insurance Act (12 U.S.C.**
 3 **1813(c)) and includes any credit union.**

4 **(v) As used in this chapter, "state licensed mortgage loan**
 5 **originator" means any individual who:**

6 **(1) is a mortgage loan originator;**

7 **(2) is not an employee of:**

8 **(A) a depository institution;**

9 **(B) a subsidiary that is:**

10 **(i) owned and controlled by a depository institution; and**

11 **(ii) regulated by a federal financial institution regulatory**
 12 **agency (as defined in 12 U.S.C. 3350(6)); or**

13 **(C) an institution regulated by the Farm Credit**
 14 **Administration;**

15 **(3) is licensed by a state or by the Secretary of the United**
 16 **States Department of Housing and Urban Development under**
 17 **Section 1508 of the S.A.F.E. Mortgage Licensing Act of 2008**
 18 **(Title V of P.L.110-289); and**

19 **(4) is registered as a mortgage loan originator with, and**
 20 **maintains a unique identifier through, the Nationwide**
 21 **Mortgage Licensing System and Registry.**

22 **(w) As used in this chapter, "unique identifier" means a number**
 23 **or other identifier that:**

24 **(1) permanently identifies a mortgage loan originator; and**

25 **(2) is assigned by protocols established by the Nationwide**
 26 **Mortgage Licensing System and Registry and the federal**
 27 **financial institution regulatory agencies to facilitate:**

28 **(A) the electronic tracking of mortgage loan originators;**
 29 **and**

30 **(B) the uniform identification of, and public access to, the**
 31 **employment history of and the publicly adjudicated**
 32 **disciplinary and enforcement actions against mortgage**
 33 **loan originators."**

34 **Page 6, line 32, after "registration" insert "unique identifier from**
 35 **the Nationwide Mortgage Licensing System and Registry and a".**

36 **Page 6, line 40, after "registration" insert "unique identifier from**
 37 **the Nationwide Mortgage Licensing System and Registry and a".**

38 **Page 7, between lines 13 and 14, begin a new paragraph and insert:**

"(f) A unique identifier obtained by an individual from the Nationwide Mortgage Licensing System and Registry under subsection (b) or (c) may not be used for purposes other than those set forth in the S.A.F.E. Mortgage Licensing Act of 2008 (Title V of P.L.110-289).".

Page 8, delete lines 31 through 33.

Page 9, delete lines 21 through 23.

Page 11, between lines 36 and 37, begin a new paragraph and insert:

"(l) The commissioner shall require each applicant for licensure as:

(1) a mortgage loan originator; or

(2) a principal manager;

to submit written authorization for the commissioner or an agent of the commissioner to obtain a consumer report (as defined in IC 24-5-24-2) concerning the applicant.

(m) In reviewing a consumer report obtained under subsection (l), the commissioner may consider one (1) or more of the following in determining whether an individual described in subsection (l) has demonstrated financial responsibility:

(1) Bankruptcies filed by the individual within the most recent ten (10) years.

(2) Current outstanding civil judgments against the individual, except judgments resulting solely from medical expenses owed by the individual.

(3) Current outstanding tax liens or other government liens or filings.

(4) Foreclosure actions filed within the most recent three (3) years against property owned by the individual.

(5) Any pattern of seriously delinquent accounts associated with the individual during the most recent three (3) years."

Page 12, line 3, delete "commissioner." and insert **"commissioner and approved by the Nationwide Mortgage Licensing System and Registry."**

Page 12, line 32, delete "July 1, 2009." and insert **"January 1, 2010."**

Page 12, line 36, delete "July 1, 2009," and insert **"January 1, 2010,"**

Page 12, line 36, delete "June 30, 2009," and insert **"December 31,**

- 1 **2009,".**
- 2 Page 12, line 38, delete "July 1, 2009." and insert "**January 1,**
- 3 **2010,".**
- 4 Page 12, line 38, delete "June 30, 2009," and insert "**December 31,**
- 5 **2009,".**
- 6 Page 13, line 3, delete "June 30, 2009." and insert "**December 31,**
- 7 **2009,".**
- 8 Page 13, line 5, delete "July 1, 2009," and insert "**January 1,**
- 9 **2010,".**
- 10 Page 13, line 5, delete "June 30," and insert "**December 31,".**
- 11 Page 13, line 7, delete "July 1, 2009." and insert "January 1, 2010.".
- 12 Page 13, line 7, delete "June 30, 2009," and insert "**December 31,**
- 13 **2009,".**
- 14 Page 17, line 19, after "crime" insert ", **other than a felony,".**
- 15 Page 22, line 10, strike "National" and insert "**Nationwide**".
- 16 Page 24, line 1, reset in roman "subsection".
- 17 Page 24, line 2, delete "subsections".
- 18 Page 24, line 2, after "(b)" insert ",".
- 19 Page 24, line 2, delete "and (c),".
- 20 Page 26, line 33, delete "National" and insert "**Nationwide**".
- 21 Page 28, delete lines 15 through 18.
- 22 Page 29, line 17, after "commissioner" delete ".".
- 23 Page 29, line 17, after "business." insert "**and approved by the**
- 24 **Nationwide Mortgage Licensing System and Registry,".**
- 25 Page 29, line 30, after "commissioner" insert ",".
- 26 Page 29, line 30, reset in roman "and".
- 27 Page 29, line 31, after "business;" insert "**approved by the**
- 28 **Nationwide Mortgage Licensing System and Registry,".**
- 29 Page 34, between lines 5 and 6, begin a new paragraph and insert:
- 30 **"(b) A person who knowingly violates section 1 of this chapter**
- 31 **commits a Class B felony if the person harmed, defrauded, misled,**
- 32 **or deceived by the violation is at least sixty (60) years of age.".**
- 33 Page 34, line 6, delete "(b)" and insert "**(c)**".
- 34 Page 34, line 11, delete "(c)" and insert "**(d)**".
- 35 Page 34, line 39, delete "(d)" and insert "**(e)**".
- 36 Page 34, between lines 41 and 42, begin a new paragraph and insert:
- 37 **"SECTION 21. IC 24-4.2 IS ADDED TO THE INDIANA CODE**
- 38 **AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE**

1 JANUARY 1, 2011]:

2 **ARTICLE 4.2. RESIDENTIAL MORTGAGE LOAN**
 3 **BROKERS**

4 **Chapter 1. Definitions**

5 **Sec. 1. The definitions in this chapter apply throughout this**
 6 **article.**

7 **Sec. 2. "Bona fide third party fee", with respect to a residential**
 8 **mortgage loan, includes any of the following:**

9 (1) **Fees for real estate appraisals. However, if the residential**
 10 **mortgage loan is governed by Title XI of the Financial**
 11 **Institutions Reform, Recovery, and Enforcement Act (12**
 12 **U.S.C. 3331 through 3352), the fee for an appraisal performed**
 13 **in connection with the loan is not a bona fide third party fee**
 14 **unless the appraisal is performed by a person that is licensed**
 15 **or certified under IC 25-34.1-3-8.**

16 (2) **Fees for title examination, abstract of title, title insurance,**
 17 **property surveys, or similar purposes.**

18 (3) **Notary and credit report fees.**

19 (4) **Fees for the services provided by a loan broker in**
 20 **procuring possible business for a creditor if the fees are paid**
 21 **by the creditor.**

22 **Sec. 3. "Branch office" means any fixed physical location from**
 23 **which a loan broker licensee holds itself out as engaging in the loan**
 24 **brokerage business.**

25 **Sec. 4. "Department" refers to the department of financial**
 26 **institutions.**

27 **Sec. 5. "Depository institution" has the meaning set forth in the**
 28 **Federal Deposit Insurance Act (12 U.S.C. 1813(c)) and includes any**
 29 **credit union.**

30 **Sec. 6. "Licensee" means a person that is issued a license under**
 31 **this article.**

32 **Sec. 7. (a) "Loan broker" means any person who, in return for**
 33 **any consideration from any source procures, attempts to procure,**
 34 **or assists in procuring, a residential mortgage loan from a third**
 35 **party or any other person, whether or not the person seeking the**
 36 **loan actually obtains the loan.**

37 **(b) The term does not include:**

38 (1) **any supervised financial organization (as defined in**

1 **IC 24-4.5-1-301(20)), including a bank, savings bank, trust**
 2 **company, savings association, or credit union;**

3 **(2) any other financial institution that is:**

4 **(A) regulated by any agency of the United States or any**
 5 **state; and**

6 **(B) regularly actively engaged in the business of making**
 7 **consumer loans that are not secured by real estate or**
 8 **taking assignment of consumer sales contracts that are not**
 9 **secured by real estate;**

10 **(3) any insurance company;**

11 **(4) any person arranging financing for the sale of the person's**
 12 **product; or**

13 **(5) a creditor that is licensed under IC 24-4.4-2-402.**

14 **Sec. 8. "Loan broker license" means a license issued by the**
 15 **department authorizing a person to engage in the loan brokerage**
 16 **business.**

17 **Sec. 9. "Loan brokerage business" means a person acting as a**
 18 **loan broker.**

19 **Sec. 10. "Loan processor or underwriter" means an individual**
 20 **who:**

21 **(1) is employed by a loan broker licensee and acts at the**
 22 **direction of, and subject to the supervision of, the loan broker**
 23 **licensee or a licensed principal manager employed by the loan**
 24 **broker licensee; and**

25 **(2) performs solely clerical or support duties on behalf of the**
 26 **loan broker licensee, including any of the following activities**
 27 **with respect to a residential mortgage loan application**
 28 **received by the loan broker licensee:**

29 **(A) The receipt, collection, distribution, and analysis of**
 30 **information commonly used in the processing or**
 31 **underwriting of a residential mortgage loan.**

32 **(B) Communicating with a borrower or potential borrower**
 33 **to obtain the information necessary for the processing or**
 34 **underwriting of a residential mortgage loan, to the extent**
 35 **that the communication does not include:**

36 **(i) offering or negotiating loan rates or terms; or**

37 **(ii) counseling borrowers or potential borrowers about**
 38 **residential mortgage loan rates or terms.**

1 **Sec. 11. "Mortgage loan origination activities" means**
 2 **performing any of the following activities for compensation or gain**
 3 **in connection with a residential mortgage loan:**

4 **(1) Receiving or recording a borrower's or potential**
 5 **borrower's residential mortgage loan application information**
 6 **in any form for use in a credit decision by a creditor.**

7 **(2) Offering to negotiate or negotiating terms of a residential**
 8 **mortgage loan.**

9 **Sec. 12. (a) "Mortgage loan originator" means an individual**
 10 **engaged in mortgage loan origination activities.**

11 **(b) The term does not include a person who:**

12 **(1) performs purely administrative or clerical tasks on behalf**
 13 **of a mortgage loan originator or acts as a loan processor or**
 14 **underwriter;**

15 **(2) performs only real estate brokerage activities and is**
 16 **licensed in accordance with IC 25-34.1 or the applicable laws**
 17 **of another state, unless the person is compensated by a**
 18 **creditor, a loan broker, a mortgage loan originator, or any**
 19 **agent of a creditor, a loan broker, or a mortgage loan**
 20 **originator; or**

21 **(3) is involved only in extensions of credit relating to time**
 22 **share plans (as defined in 11 U.S.C. 101(53D)).**

23 **Sec. 13. "Mortgage loan originator license" means a license**
 24 **issued by the department authorizing an individual to act as a**
 25 **mortgage loan originator on behalf of a loan broker licensee.**

26 **Sec. 14. "Person" means an individual, a partnership, a trust, a**
 27 **corporation, a limited liability company, a limited liability**
 28 **partnership, a sole proprietorship, a joint venture, a joint stock**
 29 **company, or another group or entity, however organized.**

30 **Sec. 15. "Principal manager" means an individual who:**

31 **(1) has at least three (3) years of experience:**

32 **(A) as a mortgage loan originator; or**

33 **(B) in financial services;**

34 **that is acceptable to the department; and**

35 **(2) is principally responsible for the supervision and**
 36 **management of the employees and business affairs of a loan**
 37 **broker licensee.**

38 **Sec. 16. "Principal manager license" means a license issued by**

the department authorizing an individual to act as:

- (1) a principal manager; or
- (2) a mortgage loan originator;

on behalf of a loan broker licensee.

Sec. 17. "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including any of the following:

- (1) Acting as a real estate broker or salesperson for a buyer, seller, lessor, or lessee of real property.
- (2) Bringing together parties interested in the sale, lease, or exchange of real property.
- (3) Negotiating, on behalf of any party, any part of a contract concerning the sale, lease, or exchange of real property, other than in connection with obtaining or providing financing for the transaction.
- (4) Engaging in any activity for which the person performing the activity is required to be licensed under IC 25-34.1 or the applicable laws of another state.
- (5) Offering to engage in any activity, or to act in any capacity with respect to any activity, described in subdivisions (1) through (4).

Sec. 18. "Registered mortgage loan originator" means a mortgage loan originator who:

- (1) is an employee of:
 - (A) a depository institution;
 - (B) a subsidiary that is:
 - (i) owned and controlled by a depository institution; and
 - (ii) regulated by a federal financial institution regulatory agency (as defined in 12 U.S.C. 3350(6)); or
 - (C) an institution regulated by the Farm Credit Administration; and
- (2) is registered with and maintains a unique identifier with the Mortgage Licensing System and Registry.

Sec. 19. "Residential mortgage loan" means a loan that is secured by a mortgage, deed of trust, or other consensual security interest on real estate in Indiana on which there is located or intended to be constructed a dwelling (as defined in the federal Truth in Lending Act (15 U.S.C. 1602(v)) that is or will be used

1 primarily for personal, family, or household purposes.

2 Sec. 20. "State licensed mortgage loan originator" means any
3 individual who:

4 (1) is a mortgage loan originator;

5 (2) is not an employee of:

6 (A) a depository institution;

7 (B) a subsidiary that is:

8 (i) owned and controlled by a depository institution; and

9 (ii) regulated by a federal financial institution regulatory
10 agency (as defined in 12 U.S.C. 3350(6)); or

11 (C) an institution regulated by the Farm Credit
12 Administration; and

13 (3) is licensed by a state or by the Secretary of the United
14 States Department of Housing and Urban Development under
15 Section 1508 of the S.A.F.E. Mortgage Licensing Act of 2008
16 (Title V of P.L.110-289); and

17 (4) is registered as a mortgage loan originator with, and
18 maintains a unique identifier through, the Nationwide
19 Mortgage Licensing System and Registry.

20 Sec. 21. "Ultimate equitable owner" means a person who,
21 directly or indirectly, owns or controls ten percent (10%) or more
22 of the equity interest in a loan broker licensed or required to be
23 licensed under this article, regardless of whether the person owns
24 or controls the equity interest through one (1) or more other
25 persons or one (1) or more proxies, powers of attorney, or
26 variances.

27 Sec. 22. "Unique identifier" means a number or other identifier
28 that:

29 (1) permanently identifies a mortgage loan originator; and

30 (2) is assigned by protocols established by the Nationwide
31 Mortgage Licensing System and Registry and the federal
32 financial institution regulatory agencies to facilitate:

33 (A) the electronic tracking of mortgage loan originators;
34 and

35 (B) the uniform identification of, and public access to, the
36 employment history of and the publicly adjudicated
37 disciplinary and enforcement actions against mortgage
38 loan originators.

Chapter 2. Licensing

Sec. 1. (a) A person may not engage in the loan brokerage business in Indiana unless the person first obtains a loan broker license from the department. Any person desiring to engage in the loan brokerage business shall apply to the department for a loan broker license under this article.

(b) An individual may not act as a mortgage loan originator in Indiana on behalf of a person licensed or required to be licensed as a loan broker under this article unless the individual first obtains a mortgage loan originator license from the department. An individual desiring to act as a mortgage loan originator on behalf of a person licensed or required to be licensed as a loan broker under this article shall apply to the department for a mortgage loan originator license under this article.

(c) An individual may not act as a principal manager on behalf of a person licensed or required to be licensed as a loan broker under this article unless the individual first obtains a principal manager license from the department. Any individual desiring to act as a principal manager on behalf of a person licensed or required to be licensed as a loan broker under this article shall apply to the department for a principal manager license under this article.

(d) The department may request evidence of compliance with this section at any of the following times:

(1) The time of application for an initial license.

(2) The time of renewal of a license.

(3) Any other time considered necessary by the department.

(e) For purposes of subsection (d), evidence of compliance with this section must include a criminal background check, including a national criminal history background check (as defined in IC 10-13-3-12) by the Federal Bureau of Investigation.

Sec. 2. (a) An application for a loan broker license or renewal of a loan broker license must contain:

(1) consent to service of process under subsection (g);

(2) evidence of the bond required in subsection (d);

(3) an application fee of two hundred dollars (\$200), plus one hundred dollars (\$100) for each ultimate equitable owner;

(4) an affidavit affirming that none of the applicant's ultimate

equitable owners, directors, managers, or officers have been convicted, in any jurisdiction, of:

(A) any felony within the previous seven (7) years; or

(B) an offense involving fraud or deception that is punishable by at least one (1) year of imprisonment; unless such an affidavit is waived by the department under subsection (h);

(5) evidence that the applicant, if the applicant is an individual, has completed the education requirements under section 4 of this chapter;

(6) the name and license number for each mortgage loan originator to be employed by the licensee;

(7) the name and license number for each principal manager; and

(8) for each ultimate equitable owner, the following information:

(A) The name of the ultimate equitable owner.

(B) The address of the ultimate equitable owner, including the home address of the ultimate equitable owner if the ultimate equitable owner is an individual.

(C) The telephone number of the ultimate equitable owner, including the home telephone number if the ultimate equitable owner is an individual.

(D) The ultimate equitable owner's Social Security number and date of birth, if the ultimate equitable owner is an individual.

(b) An application for licensure as a mortgage loan originator shall be made on a form prescribed by the department. The application must include the following information for the individual that seeks to be licensed as a mortgage loan originator:

(1) The name of the individual.

(2) The home address of the individual.

(3) The home telephone number of the individual.

(4) The individual's Social Security number and date of birth.

(5) The name of the:

(A) loan broker licensee; or

(B) applicant for loan broker licensure;

for whom the individual seeks to be employed as a mortgage

- 1 **loan originator.**
- 2 **(6) Consent to service of process under subsection (g).**
- 3 **(7) Evidence that the individual has completed the education**
- 4 **requirements described in section 4 of this chapter.**
- 5 **(8) An application fee of fifty dollars (\$50).**
- 6 **(9) All:**
- 7 **(A) license numbers previously issued to the individual**
- 8 **under IC 23-2-5 (before its repeal on January 1, 2011), if**
- 9 **applicable; and**
- 10 **(B) license numbers previously issued to the individual**
- 11 **under this article, if applicable.**
- 12 **(c) An application for licensure as a principal manager shall be**
- 13 **made on a form prescribed by the department. The application**
- 14 **must include the following information for the individual who**
- 15 **seeks to be licensed as a principal manager:**
- 16 **(1) The name of the individual.**
- 17 **(2) The home address of the individual.**
- 18 **(3) The home telephone number of the individual.**
- 19 **(4) The individual's Social Security number and date of birth.**
- 20 **(5) The name of the:**
- 21 **(A) loan broker licensee; or**
- 22 **(B) applicant for loan broker licensure;**
- 23 **for whom the individual seeks to be employed as a principal**
- 24 **manager.**
- 25 **(6) Consent to service of process under subsection (g).**
- 26 **(7) Evidence that the individual has completed the education**
- 27 **requirements described in section 4 of this chapter.**
- 28 **(8) Evidence that the individual has at least three (3) years of**
- 29 **experience in the:**
- 30 **(A) loan brokerage; or**
- 31 **(B) financial services;**
- 32 **business.**
- 33 **(9) An application fee of one hundred dollars (\$100).**
- 34 **(10) All:**
- 35 **(A) license numbers previously issued to the individual**
- 36 **under IC 23-2-5 (before its repeal on January 1, 2011), if**
- 37 **applicable; and**
- 38 **(B) license numbers previously issued to the individual**

1 under this article, if applicable.

2 (d) A loan broker licensee must maintain a bond satisfactory to
3 the department, which must cover the activities of each licensed
4 mortgage loan originator and licensed principal manager
5 employed by the loan broker licensee. The bond must be in one (1)
6 of the following amounts, depending on the total amount of
7 residential mortgage loans originated by the loan broker in the
8 previous calendar year:

9 (1) Fifty thousand dollars (\$50,000) if the total amount of
10 residential mortgage loans originated by the loan broker in
11 the previous calendar year was not greater than one million
12 five hundred thousand dollars (\$1,500,000).

13 (2) Seventy thousand dollars (\$70,000) if the total amount of
14 residential mortgage loans originated by the loan broker in
15 the previous calendar year was greater than one million five
16 hundred thousand dollars (\$1,500,000) but not greater than
17 five million dollars (\$5,000,000).

18 (3) Ninety-five thousand dollars (\$95,000) if the total amount
19 of residential mortgage loans originated by the loan broker in
20 the previous calendar year was greater than five million
21 dollars (\$5,000,000).

22 The bond shall be in favor of the state and shall secure payment of
23 damages to any person aggrieved by any violation of this article by
24 the licensee or any licensed mortgage loan originator or licensed
25 principal manager employed by the licensee.

26 (e) The department shall issue a license and license number to
27 an applicant for a loan broker license, a mortgage loan originator
28 license, or a principal manager license if the applicant meets the
29 applicable licensure requirements set forth in this article.

30 (f) Licenses issued by the department under this article expire
31 on December 31 of the year in which they are issued.

32 (g) Every applicant for licensure or for renewal of a license shall
33 file with the department, in such form as the department by rule or
34 order prescribes, an irrevocable consent appointing the
35 department to be the applicant's agent to receive service of any
36 lawful process in any noncriminal suit, action, or proceeding
37 against the applicant arising from the violation of any provision of
38 this article. Service shall be made in accordance with the Indiana

1 **Rules of Trial Procedure.**

2 (h) Upon good cause shown, the department may waive the
3 requirements of subsection (a)(4) for one (1) or more of an
4 applicant's ultimate equitable owners, directors, managers, or
5 officers.

6 (i) Whenever an initial or a renewal application for a license is
7 denied or withdrawn, the department shall retain the initial or
8 renewal application fee paid.

9 (j) At the time of application for an initial license under this
10 article, the department shall require each:

11 (1) equitable owner, in the case of an applicant for a loan
12 broker license;

13 (2) individual described in subsection (a)(4), in the case of an
14 applicant for a loan broker license; and

15 (3) applicant for licensure as:

16 (A) a mortgage loan originator; or

17 (B) a principal manager;

18 to submit fingerprints for a national criminal history background
19 check (as defined in IC 10-13-3-12) by the Federal Bureau of
20 Investigation, for use by the department in determining whether
21 the equitable owner, the individual described in subsection (a)(4),
22 or the applicant should be denied licensure under this article for
23 any reason set forth in IC 24-4.2-3-4. The equitable owner,
24 individual described in subsection (a)(4), or applicant shall pay any
25 fees or costs associated with the fingerprints and background check
26 required under this subsection. The department may not release
27 the results of a background check described in this subsection to
28 any private entity.

29 (k) Every three (3) years, beginning with the third calendar year
30 following the calendar year in which an initial license is issued
31 under this article, the department shall require each:

32 (1) equitable owner, in the case of a loan broker licensee;

33 (2) individual described in subsection (a)(4), in the case of a
34 loan broker licensee; and

35 (3) licensed:

36 (A) mortgage loan originator; or

37 (B) principal manager;

38 to submit fingerprints for a national criminal history background

1 check (as defined in IC 10-13-3-12) by the Federal Bureau of
 2 Investigation, for use by the department in determining whether
 3 the equitable owner, the individual described in subsection (a)(4),
 4 or the licensee should be denied continued licensure under this
 5 article for any reason set forth in IC 24-4.2-3-4. The equitable
 6 owner, individual described in subsection (a)(4), or licensee shall
 7 pay any fees or costs associated with the fingerprints and
 8 background check required under this subsection. The department
 9 may not release the results of a background check described in this
 10 subsection to any private entity.

11 (l) The department shall require each applicant for licensure as:

12 (1) a mortgage loan originator; or

13 (2) a principal manager;

14 to submit written authorization for the department or an agent of
 15 the department to obtain a consumer report (as defined in
 16 IC 24-5-24-2) concerning the applicant.

17 (m) In reviewing a consumer report obtained under subsection
 18 (l), the department may consider one (1) or more of the following
 19 in determining whether an individual described in subsection (l)
 20 has demonstrated financial responsibility:

21 (1) Bankruptcies filed by the individual within the most recent
 22 ten (10) years.

23 (2) Current outstanding civil judgments against the
 24 individual, except judgments resulting solely from medical
 25 expenses owed by the individual.

26 (3) Current outstanding tax liens or other government liens or
 27 filings.

28 (4) Foreclosure actions filed within the most recent three (3)
 29 years against property owned by the individual.

30 (5) Any pattern of seriously delinquent accounts associated
 31 with the individual during the most recent three (3) years.

32 Sec. 3. (a) The department shall require an applicant for
 33 licensure as:

34 (1) a mortgage loan originator under section 2(b) of this
 35 chapter; or

36 (2) a principal manager under section 2(c) of this chapter;

37 to pass a written examination prepared and administered by the
 38 department or an agent appointed by the department and

1 approved by the Nationwide Mortgage Licensing System and
2 Registry.

3 (b) The written examination required by this section must
4 measure the applicant's knowledge and comprehension in
5 appropriate subject areas, including the following:

6 (1) Ethics.

7 (2) Federal laws and regulations concerning the origination of
8 residential mortgage loans.

9 (3) State laws and rules concerning the origination of
10 residential mortgage loans.

11 (c) An individual who answers at least seventy-five percent
12 (75%) of the questions on the written examination correctly is
13 considered to have passed the examination.

14 (d) An individual who does not pass the written examination
15 may retake the examination up to two (2) additional times, with
16 each subsequent attempt occurring at least thirty (30) days after
17 the individual last sat for the examination. If an individual fails
18 three (3) consecutive examinations, the individual must wait to
19 retake the examination until at least six (6) months after the
20 individual sat for the third examination.

21 (e) Except as provided in subsection (f), if an individual who has
22 been issued a mortgage loan originator license or a principal
23 manager license under this article:

24 (1) allows the individual's license to lapse; or

25 (2) otherwise does not maintain a valid license under this
26 article;

27 for a period of at least five (5) years, the individual must retake the
28 written examination required by this section.

29 (f) This subsection applies to an individual who was licensed as
30 a mortgage loan originator or a principal manager under IC 23-2-5
31 (before its repeal on January 1, 2011). An individual to whom this
32 subsection applies is not required to take the written examination
33 required by this section except as follows:

34 (1) If the individual's license issued under IC 23-2-5 (before its
35 repeal on January 1, 2011) was valid and in effect on
36 December 31, 2010, the individual is considered licensed
37 under this article as of January 1, 2011. After December 31,
38 2010, an individual described in this subdivision is not

1 required to take the written examination required by this
2 section unless the individual:

3 (A) allows the individual's license to lapse; or

4 (B) otherwise does not maintain a valid license;

5 for a period of at least five (5) years, beginning at any time
6 after December 31, 2010.

7 (2) If the individual's license issued under IC 23-2-5 (before its
8 repeal on January 1, 2011) was not valid and in effect on
9 December 31, 2010, the individual is not considered licensed
10 under this article as of January 1, 2011. After December 31,
11 2010, an individual described in this subdivision who seeks to
12 act as a mortgage loan originator or a principal manager in
13 Indiana must:

14 (A) apply to the department for licensure under section
15 2(b) or 2(c) of this chapter, whichever applies; and

16 (B) take the written examination required by this section.

17 Sec. 4. (a) A person applying for an initial license must provide
18 to the department evidence that during the twenty-four (24) month
19 period immediately preceding the application that the person
20 completed at least twenty (20) hours of academic instruction,
21 acceptable to the department and approved by the Nationwide
22 Mortgage Licensing System and Registry. The education hours
23 required under this subsection must include the following:

24 (1) Three (3) hours of federal law and regulations concerning
25 residential mortgage lending.

26 (2) Three (3) hours of ethics, including instruction on fraud,
27 consumer protection, and fair lending practices.

28 (3) Two (2) hours of training concerning lending standards for
29 nontraditional residential mortgage loan products.

30 (4) Two (2) hours of state law and rules concerning residential
31 mortgage lending.

32 (b) To maintain a license under this article, a person must
33 provide to the department evidence that the person has completed
34 at least eight (8) hours of academic instruction that is acceptable to
35 the department, and approved by the Nationwide Mortgage
36 Licensing System and Registry, during each calendar year after the
37 year in which the license was initially issued. The education hours
38 required under this subsection must include the following:

1 **(1) Three (3) hours of federal law and regulations concerning**
 2 **residential mortgage lending.**

3 **(2) Two (2) hours of ethics, including instruction on fraud,**
 4 **consumer protection, and fair lending practices.**

5 **(3) Two (2) hours of training concerning lending standards for**
 6 **nontraditional residential mortgage loan products.**

7 **(c) In determining the acceptability of academic instruction the**
 8 **department shall give consideration to approval of a licensee's**
 9 **internal academic instruction programs completed by employees.**

10 **(d) In determining the acceptability of an education course, the**
 11 **department may require a fee, in an amount prescribed by the**
 12 **department by rule or order, for the department's review of the**
 13 **course.**

14 **Sec. 5. A loan broker licensee may not continue engaging in the**
 15 **loan brokerage business unless the licensee's license is renewed**
 16 **annually. A mortgage loan originator licensee or a principal**
 17 **manager licensee may not continue acting as:**

18 **(1) a mortgage loan originator; or**

19 **(2) a principal manager;**

20 **unless the licensee's license is renewed annually. A licensee under**
 21 **this article shall renew its license by filing with the department, at**
 22 **least thirty (30) days before the expiration of the license, an**
 23 **application containing any information the department may**
 24 **require to indicate any material change from the information**
 25 **contained in the applicant's original application or any previous**
 26 **application.**

27 **Chapter 3. Administration, Compliance, and Enforcement**

28 **Sec. 1. (a) After December 31, 2010, the money in the loan**
 29 **broker regulation account established by IC 23-2-5-7 (before its**
 30 **repeal on January 1, 2011) may be used only for the regulation of**
 31 **loan brokers, mortgage loan originators, and principal managers**
 32 **under this article. The loan broker regulation account shall be**
 33 **administered by the treasurer of state. The money in the loan**
 34 **broker regulation account does not revert to any other account**
 35 **within the state general fund at the end of a state fiscal year.**

36 **(b) All fees and funds accruing from the administration of this**
 37 **article shall be accounted for by the department and shall be**
 38 **deposited with the treasurer of state who shall deposit them in the**

1 loan broker regulation account in the state general fund.

2 (c) All expenses incurred in the administration of this article
3 shall be paid from:

- 4 (1) appropriations made from the state general fund; and
- 5 (2) additional funds available, with the approval of the budget
6 agency, from the loan broker regulation account.

7 Sec. 2. (a) To be enforceable, every contract for the services of
8 a loan broker shall be in writing and signed by the contracting
9 parties.

10 (b) At the time a contract for the services of a loan broker is
11 signed, the loan broker shall provide a copy of the signed contract
12 to each of the other parties to the contract.

13 (c) Every contract for the services of a loan broker must include
14 the following statement:

15 "No statement or representation by a loan broker is valid or
16 enforceable unless the statement or representation is in writing."

17 (d) This section does not apply to a contract that provides for
18 the payment of referral fees by a lender or a third party.

19 Sec. 3. (a) As used in this section, "appraisal company" means
20 a business entity that:

- 21 (1) performs real estate appraisals on a regular basis for
22 compensation through one (1) or more owners, officers,
23 employees, or agents; or
- 24 (2) holds itself out to the public as performing real estate
25 appraisals.

26 (b) As used in this section, "immediate family", with respect to
27 an individual, refers to:

- 28 (1) the individual's spouse who resides in the individual's
29 household; and
- 30 (2) any dependent child of the individual.

31 (c) As used in this section, "real estate appraiser" means a
32 person who:

- 33 (1) is licensed as a real estate broker under IC 25-34.1 and
34 performs real estate appraisals within the scope of the
35 person's license;
- 36 (2) holds a real estate appraiser license or certificate issued
37 under IC 25-34.1-3-8; or
- 38 (3) otherwise performs real estate appraisals in Indiana.

(d) A person licensed under this article, or a person required to be licensed under this article, shall not knowingly bribe, coerce, or intimidate another person to corrupt or improperly influence the independent judgment of a real estate appraiser with respect to the value of any real estate offered as security for a residential mortgage loan.

(e) Except as provided in subsection (f):

(1) a person licensed under this article, or a person required to be licensed under this article;

(2) a member of the immediate family of:

(A) a person licensed under this article; or

(B) a person required to be licensed under this article; or

(3) a person described in subdivision (1) or (2) in combination with one (1) or more other persons described in subdivision (1) or (2);

may not own or control a majority interest in an appraisal company.

(f) This subsection applies to a person or combination of persons described in subsection (e) who own or control a majority interest in an appraisal company on June 30, 2007. The prohibition set forth in subsection (e) does not apply to a person or combination of persons described in this subsection, subject to the following:

(1) The interest in the appraisal company owned or controlled by the person or combination of persons described in subsection (e) shall not be increased after June 30, 2007.

(2) The interest of a person licensed under this article, or of a person required to be licensed under this article, shall not be transferred to a member of the person's immediate family.

(3) If the department determines that any person or combination of persons described in subsection (e) has violated this article, the department may order one (1) or more of the persons to divest their interest in the appraisal company. The department may exercise the remedy provided by this subdivision in addition to, or as a substitute for, any other remedy available to the department under this article.

Sec. 4. (a) Whenever it appears to the department that a person has engaged in or is about to engage in an act or a practice constituting a violation of this article or a rule or an order under

1 this article, the department may investigate and may issue, with a
 2 prior hearing if there exists no substantial threat of immediate
 3 irreparable harm or without a prior hearing, if there exists a
 4 substantial threat of immediate irreparable harm, orders and
 5 notices as the department determines to be in the public interest,
 6 including cease and desist orders, orders to show cause, and
 7 notices. After notice and hearing, the department may enter an
 8 order of rescission, restitution, or disgorgement, including interest
 9 at the rate of eight percent (8%) per year, directed to a person who
 10 has violated this article or a rule or order under this article.

11 (b) Upon the issuance of an order or notice without a prior
 12 hearing by the department under subsection (a), the department
 13 shall promptly notify the respondent and, if the subject of the order
 14 or notice is a mortgage loan originator licensee or a principal
 15 manager licensee, the loan broker licensee for whom the mortgage
 16 loan originator or principal manager is employed:

- 17 (1) that the order or notice has been issued;
- 18 (2) of the reasons the order or notice has been issued; and
- 19 (3) that upon the receipt of a written request the matter will
 20 be set for a hearing to commence not later than forty-five (45)
 21 business days after receipt of the request unless the
 22 respondent consents to a later date.

23 If a hearing is not requested and not ordered by the department,
 24 an order remains in effect until it is modified or vacated by the
 25 department. If a hearing is requested or ordered, the department,
 26 after notice of an opportunity for hearing, may modify or vacate
 27 the order or extend it until final determination.

28 (c) The department may deny an application for an initial or a
 29 renewal license, and may suspend or revoke the license of a
 30 licensee, if the applicant, the licensee, or an ultimate equitable
 31 owner of an applicant for a loan broker license or of a loan broker
 32 licensee:

- 33 (1) has, within the most recent ten (10) years:
- 34 (A) been the subject of an adjudication or a determination
 35 by:
- 36 (i) a court with jurisdiction; or
- 37 (ii) an agency or administrator that regulates securities,
 38 commodities, banking, financial services, insurance, real

- 1 estate, or the real estate appraisal industry;
- 2 in Indiana or in any other jurisdiction; and
- 3 (B) been found, after notice and opportunity for hearing,
- 4 to have violated the securities, commodities, banking,
- 5 financial services, insurance, real estate, or real estate
- 6 appraisal laws of Indiana or any other jurisdiction;
- 7 (2) except as provided in subsection (d)(1) with respect to the
- 8 loan brokerage business, has:
 - 9 (A) been denied the right to do business in the securities,
 - 10 commodities, banking, financial services, insurance, real
 - 11 estate, or real estate appraisal industry; or
 - 12 (B) had the person's authority to do business in the
 - 13 securities, commodities, banking, financial services,
 - 14 insurance, real estate, or real estate appraisal industry
 - 15 revoked or suspended;
 - 16 by Indiana or by any other state, federal, or foreign
 - 17 governmental agency or self regulatory organization;
 - 18 (3) is insolvent;
 - 19 (4) has violated any provision of this article;
 - 20 (5) has knowingly filed with the department any document or
 - 21 statement that:
 - 22 (A) contains a false representation of a material fact;
 - 23 (B) fails to state a material fact; or
 - 24 (C) contains a representation that becomes false after the
 - 25 filing but during the term of a license as provided in
 - 26 subsection (j);
 - 27 (6) has been convicted, within ten (10) years before the date of
 - 28 the application, renewal, or review, of any crime, other than
 - 29 a felony, involving fraud or deceit;
 - 30 (7) if the person is a loan broker licensee or a principal
 - 31 manager, has failed to reasonably supervise the person's
 - 32 mortgage loan originators or employees to ensure their
 - 33 compliance with this article;
 - 34 (8) is on the most recent tax warrant list supplied to the
 - 35 department by the department of state revenue; or
 - 36 (9) has engaged in dishonest or unethical practices in the loan
 - 37 brokerage business, as determined by the department.
 - 38 (d) The department shall deny an application for an initial or a

renewal license and shall suspend or revoke the license of a licensee if the applicant, the licensee, or an ultimate equitable owner of an applicant for a loan broker license or of a loan broker licensee:

(1) has had a:

(A) loan broker license issued under this article;

(B) mortgage loan originator license issued under this article;

(C) principal manager license issued under this article; or

(D) license that is:

(i) equivalent to a license described in clause (A), (B), or (C); and

(ii) issued by another jurisdiction;

revoked by the department or the appropriate regulatory agency in another jurisdiction, whichever applies;

(2) has been convicted of or pleaded guilty or nolo contendere to a felony in a domestic, foreign, or military court:

(A) during the seven (7) year period immediately preceding the date of the application or review; or

(B) at any time preceding the date of the application or review if the felony involved an act of fraud or dishonesty, a breach of trust, or money laundering;

(3) fails to maintain the bond required under IC 24-4.2-2-2(d);

(4) fails to demonstrate the financial responsibility, character, and general fitness necessary to:

(A) command the confidence of the community in which the applicant or licensee engages or will engage in the loan brokerage business; and

(B) warrant a determination by the department that the applicant or licensee will operate honestly, fairly, and efficiently within the purposes of this article;

(5) has failed to meet the education requirements set forth in IC 24-4.2-2-4;

(6) has failed to pass the written examination required by IC 24-4.2-2-3; or

(7) fails to:

(A) keep or maintain records in accordance with section 12 of this chapter; or

(B) allow the department or an agent appointed by the

1 department to inspect or examine a loan broker licensee's
2 books and records to determine compliance with section 12
3 of this chapter.

4 (e) The department may do either of the following:

5 (1) Censure:

6 (A) a licensee;

7 (B) an officer, a director, or an ultimate equitable owner of
8 a loan broker licensee; or

9 (C) any other person;

10 who violates or causes a violation of this article.

11 (2) Permanently bar any person described in subdivision (1)
12 from being:

13 (A) licensed under this article; or

14 (B) employed by or affiliated with a person licensed under
15 this article;

16 if the person violates or causes a violation of this article.

17 (f) The department may not enter a final order:

18 (1) denying, suspending, or revoking the license of an
19 applicant or a licensee; or

20 (2) imposing other sanctions;

21 without prior notice to all interested parties, opportunity for a
22 hearing, and written findings of fact and conclusions of law.

23 However, the department may by summary order deny, suspend,
24 or revoke a license pending final determination of any proceeding
25 under this section or before any proceeding is initiated under this
26 section. Upon the entry of a summary order, the department shall
27 promptly notify all interested parties that the summary order has
28 been entered, of the reasons for the summary order, and that upon
29 receipt by the department of a written request from a party, the
30 matter will be set for hearing to commence not later than forty-five
31 (45) business days after receipt of the request. If no hearing is
32 requested and none is ordered by the department, the order
33 remains in effect until it is modified or vacated by the department.
34 If a hearing is requested or ordered, the department, after notice
35 of the hearing has been given to all interested persons and the
36 hearing has been held, may modify or vacate the order or extend
37 it until final determination.

38 (g) IC 4-21.5 does not apply to a proceeding under this section.

(h) If a mortgage loan originator licensee or a principal manager licensee seeks to transfer the licensee's license to another loan broker licensee who desires to have the mortgage loan originator licensee or principal manager licensee act as a mortgage loan originator or as a principal manager, whichever applies, the mortgage loan originator licensee or principal manager licensee shall, before the mortgage loan originator licensee or principal manager licensee acts as a mortgage loan originator or as a principal manager for the new employer, submit to the department, on a form prescribed by the department, a license application, as required by IC 24-4.2-2-2.

(i) If the employment of a mortgage loan originator licensee or principal manager licensee is terminated, whether:

(1) voluntarily by the mortgage loan originator licensee or principal manager licensee; or

(2) by the loan broker licensee employing the mortgage loan originator licensee or principal manager licensee;

the loan broker licensee that employed the mortgage loan originator licensee or principal manager licensee shall, not later than five (5) days after the termination, notify the department of the termination and the reasons for the termination.

(j) If a material fact or statement included in an application under this article changes after the application has been submitted, the applicant shall provide written notice to the department of the change. The department may deny, revoke, or refuse to renew a license applied for or held by any person who:

(1) is required to submit a written notice under this subsection and fails to provide the required notice within two (2) business days after the person discovers or should have discovered the change; or

(2) would not qualify for licensure under this article as a result of the change in a material fact or statement.

Sec. 5. (a) The department may do the following:

(1) Adopt rules under IC 4-22-2 to implement this article.

(2) Make investigations and examinations:

(A) in connection with any application for licensure under this article or with any license already granted; or

(B) whenever it appears to the department, upon the basis

- 1 of a complaint or information, that reasonable grounds
2 exist for the belief that an investigation or examination is
3 necessary or advisable for the more complete protection of
4 the interests of the public.
- 5 (3) Charge as costs of investigation or examination all
6 reasonable expenses, including a per diem prorated upon the
7 salary of the employee performing the investigation or
8 examination and actual traveling and hotel expenses. All
9 reasonable expenses are to be paid by the party or parties
10 under investigation or examination if the party has violated
11 this article.
- 12 (4) Issue notices and orders, including cease and desist notices
13 and orders, after making an investigation or examination
14 under subdivision (2). The department may also bring an
15 action on behalf of the state to enjoin a person from violating
16 this article. The department shall notify the person that an
17 order or notice has been issued, the reasons for the order or
18 notice, and that a hearing will be set not later than forty-five
19 (45) days after the department receives a written request from
20 the person requesting a hearing.
- 21 (5) Sign all orders, official certifications, documents, or
22 papers issued under this article or delegate the authority to
23 sign any of those items to a deputy.
- 24 (6) Hold and conduct hearings.
- 25 (7) Hear evidence.
- 26 (8) Conduct inquiries with or without hearings.
- 27 (9) Receive reports of investigators or other officers or
28 employees of the state of Indiana or of any municipal
29 corporation or governmental subdivision within the state.
- 30 (10) Administer oaths, or cause them to be administered.
- 31 (11) Subpoena witnesses, and compel them to attend and
32 testify.
- 33 (12) Compel the production of books, records, and other
34 documents.
- 35 (13) Order depositions to be taken of any witness residing
36 within or without the state. The depositions shall be taken in
37 the manner prescribed by law for depositions in civil actions
38 and made returnable to the department.

(14) Order that each witness appearing under the department's order to testify before the department shall receive the fees and mileage allowances provided for witnesses in civil cases.

(15) Provide interpretive opinions or issue determinations that the department will not institute a proceeding or an action under this article against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this article. The department may adopt rules to establish fees for individuals requesting an interpretive opinion or a determination under this subdivision. A person may not request an interpretive opinion or a determination concerning an activity that:

(A) occurred before; or

(B) is occurring on;

the date the opinion or determination is requested.

(16) Subject to subsection (f), designate a multistate automated licensing system and repository, established and operated by a third party, to serve as the sole entity responsible for:

(A) processing applications for:

(i) licenses under this article; and

(ii) renewals of licenses under this article; and

(B) performing other services that the department determines are necessary for the orderly administration of the division's licensing system.

A multistate automated licensing system and repository described in this subdivision may include the Nationwide Mortgage Licensing System and Registry established by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. The department may take any action necessary to allow the department to participate in a multistate automated licensing system and repository.

(b) If a witness, in any hearing, inquiry, or investigation conducted under this article, refuses to answer any question or produce any item, the department may file a written petition with the circuit or superior court in the county where the hearing,

1 investigation, or inquiry in question is being conducted requesting
 2 a hearing on the refusal. The court shall hold a hearing to
 3 determine if the witness may refuse to answer the question or
 4 produce the item. If the court determines that the witness, based
 5 upon the witness's privilege against self-incrimination, may
 6 properly refuse to answer or produce an item, the department may
 7 make a written request that the court grant use immunity to the
 8 witness. Upon written request of the department, the court shall
 9 grant use immunity to a witness. The court shall instruct the
 10 witness, by written order or in open court, that:

- 11 (1) any evidence the witness gives, or evidence derived from
 12 that evidence, may not be used in any criminal proceedings
 13 against that witness, unless the evidence is volunteered by the
 14 witness or is not responsive to a question; and
- 15 (2) the witness must answer the questions asked and produce
 16 the items requested.

17 A grant of use immunity does not prohibit evidence that the
 18 witness gives in a hearing, investigation, or inquiry from being
 19 used in a prosecution for perjury under IC 35-44-2-1. If a witness
 20 refuses to give the evidence after the witness has been granted use
 21 immunity, the court may find the witness in contempt.

22 (c) In any prosecution, action, suit, or proceeding based upon or
 23 arising out of this article, the department may sign a certificate
 24 showing compliance or noncompliance with this article by any
 25 person. This certificate shall constitute prima facie evidence of
 26 compliance or noncompliance with this article and shall be
 27 admissible in evidence in any action at law or in equity to enforce
 28 this article.

29 (d) If:

- 30 (1) a person disobeys any lawful:
 - 31 (A) subpoena issued under this article; or
 - 32 (B) order or demand requiring the production of any
 - 33 books, accounts, papers, records, documents, or other
 - 34 evidence or information as provided in this article; or
- 35 (2) a witness refuses to:
 - 36 (A) appear when subpoenaed;
 - 37 (B) testify to any matter about which the witness may be
 - 38 lawfully interrogated; or

(C) take or subscribe to any oath required by this article; the circuit or superior court of the county in which the hearing, inquiry, or investigation in question is held, if demand is made or if, upon written petition, the production is ordered to be made, or the department or a hearing officer appointed by the department, shall compel compliance with the lawful requirements of the subpoena, order, or demand, compel the production of the necessary or required books, papers, records, documents, and other evidence and information, and compel any witness to attend in any Indiana county and to testify to any matter about which the witness may lawfully be interrogated, and to take or subscribe to any oath required.

(e) If a person fails, refuses, or neglects to comply with a court order under this section, the person shall be punished for contempt of court.

(f) The department's authority to designate a multistate automated licensing system and repository under subsection (a)(16) is subject to the following:

(1) The department may not require any person that is not required to be licensed under this article, or any employee or agent of a person that is not required to be licensed under this article, to:

(A) submit information to the department; or

(B) participate in;

the multistate automated licensing system and repository.

(2) The department may require a person required under this article to submit information to the multistate automated licensing system and repository to pay a processing fee considered reasonable by the department.

Sec. 6. Copies of any statement or document filed with the department, and copies of any records of the department, certified to by the director of the department or any deputy are admissible in any prosecution, action, suit, or proceeding based upon, or arising out of or under, the provisions of this article to the same effect as the original of the statement, document, or record would be if actually produced.

Sec. 7. Upon:

(1) disobedience on the part of any person to any lawful

subpoena issued under this article, or to any lawful order or demand requiring the production of any books, accounts, papers, records, documents, or other evidence or information as provided in this article; or

(2) the refusal of any witness to appear when subpoenaed, to testify to any matter regarding which the witness may be lawfully interrogated, or to take or subscribe to any oath required by this article;

it shall be the duty of the circuit or superior court of the county in which the hearing or inquiry or investigation in question is being or is to be held, where demand is made, or where the production is ordered to be made, upon written petition of the department, to compel obedience to the lawful requirements of the subpoena, order, or demand.

Sec. 8. (a) If the department determines, after a hearing, that a person has violated this article, the department may, in addition to all other remedies, impose a civil penalty upon the person in an amount not to exceed ten thousand dollars (\$10,000) for each violation.

(b) The department may bring an action in the circuit or superior court of Marion County to enforce payment of any penalty imposed under this section.

Sec. 9. Any person who violates this article or any rule or regulation adopted under this article, in connection with a contract for the services of a loan broker, is liable to any person damaged by the violation, for the amount of the actual damages suffered, interest at the legal rate, and attorney's fees. If a person violates any provision of this article, or any rule or regulation adopted under this article, in connection with a contract for loan brokering services, the contract is void, and the prospective borrower is entitled to receive from the loan broker all sums paid to the loan broker.

Sec. 10. (a) Except as provided in subsection (b), a person who knowingly violates this article commits a Class C felony.

(b) A person who knowingly violates this article commits a Class B felony if the person damaged by the violation is at least sixty (60) years of age.

(c) A person commits a Class C felony if the person knowingly

1 makes or causes to be made:

- 2 (1) in any document filed with or sent to the department; or
- 3 (2) in any proceeding, investigation, or examination under this
- 4 article;
- 5 any statement that is, at the time and in the light of the
- 6 circumstances under which it is made, false or misleading in any
- 7 material respect.

8 Sec. 11. (a) If a transaction for which a loan broker has charged
 9 any fee is rescinded by any person under the provisions of the
 10 Truth-in-Lending Act (15 U.S.C. 1601-1667e) within twenty (20)
 11 calendar days after a notice of the rescission has been delivered to
 12 the creditor, the loan broker shall return to the person any
 13 consideration that has been given to the loan broker other than
 14 bona fide third party fees.

15 (b) For purposes of calculating the time period during which a
 16 person may avoid a contract under IC 24-5-10-8 or
 17 IC 24-4.5-2-502, a contract with a loan broker shall be considered
 18 to be a sale of services that occurs on the date on which the person
 19 signs the written contract required by section 2 of this chapter.

20 Sec. 12. (a) Each loan broker agreement shall be given an
 21 account number. Each person licensed as a loan broker or required
 22 to be licensed as a loan broker under this article shall keep and
 23 maintain the following records or their electronic equivalent:

- 24 (1) A file for each borrower or proposed borrower that
- 25 contains the following:
- 26 (A) The name and address of the borrower or any
- 27 proposed borrower.
- 28 (B) A copy of the signed loan broker agreement.
- 29 (C) A copy of any other papers or instruments used in
- 30 connection with the loan broker agreement and signed by
- 31 the borrower or any proposed borrower.
- 32 (D) If a loan was obtained for the borrower, the name and
- 33 address of the creditor.
- 34 (E) If a loan is accepted by the borrower, a copy of the loan
- 35 agreement.
- 36 (F) The amount of the loan broker's fee that the borrower
- 37 has paid. If there is an unpaid balance, the status of any
- 38 collection efforts.

1 **(2) All receipts from or for the account of borrowers or any**
2 **proposed borrowers and all disbursements to or for the**
3 **account of borrowers or any proposed borrowers, recorded**
4 **so that the transactions are readily identifiable.**

5 **(3) A general ledger that shall be posted at least monthly, and**
6 **a trial balance sheet and profit and loss statement prepared**
7 **within thirty (30) days of the department's request for the**
8 **information.**

9 **(4) A sample of:**

10 **(A) all advertisements, pamphlets, circulars, letters,**
11 **articles, or communications published in any newspaper,**
12 **magazine, or periodical;**

13 **(B) scripts of any recording, radio, or television**
14 **announcement; and**

15 **(C) any sales kits or literature;**

16 **to be used in solicitation of borrowers.**

17 **(5) A report that lists all residential mortgage loans, including**
18 **pending loans and loans that were not closed, originated by**
19 **the loan broker. The report required by this subdivision must**
20 **be searchable by, or organized according to, the borrower's**
21 **last name and must include the following information for each**
22 **residential mortgage loan listed:**

23 **(A) The name and address of the borrower or potential**
24 **borrower.**

25 **(B) The name of the creditor.**

26 **(C) The name of the mortgage loan originator.**

27 **(D) The loan amount.**

28 **(E) The status of the loan, including the date of closing or**
29 **denial by the creditor.**

30 **(F) The interest rate for the loan.**

31 **The report required by this subdivision may be prepared or**
32 **produced by or through the loan broker's loan origination**
33 **software or other software used by the loan broker in its loan**
34 **brokerage business.**

35 **(b) The records listed in subsection (a) shall be kept for a period**
36 **of two (2) years in the office of the loan broker in which the loan**
37 **was originated and must be separate or readily identifiable from**
38 **the records of any other business that is conducted in the office of**

the loan broker. If the office in which any records are required to be kept under this subsection is located outside Indiana, the records must be:

(1) made available at a location that is:

(A) located in Indiana; and

(B) accessible to the securities division; or

(2) maintained electronically and made available to the securities division not later than ten (10) business days after a request by the securities division to inspect or examine the records.

(c) If a breach of the security of any records:

(1) maintained by a loan broker under this section; and

(2) containing the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers;

occurs, the loan broker is subject to the disclosure requirements under IC 24-4.9-3, unless the loan broker is exempt from the disclosure requirements under IC 24-4.9-3-4.

(d) A person who is licensed or required to be licensed under this article may not dispose of the unencrypted, unredacted personal information of one (1) or more borrowers or prospective borrowers without first shredding, incinerating, mutilating, erasing, or otherwise rendering the information illegible or unusable.

(e) As used in this article, "personal information" includes any of the following:

(1) An individual's first and last names or first initial and last name.

(2) Any of the following data elements:

(A) A Social Security number.

(B) A driver's license number.

(C) A state identification card number.

(D) A credit card number.

(E) A financial account number or debit card number in combination with a security code, password, or access code that would permit access to the person's account.

(3) With respect to an individual, any of the following:

(A) Address.

- 1 **(B) Telephone number.**
- 2 **(C) Information concerning the individual's:**
- 3 **(i) income or other compensation;**
- 4 **(ii) credit history;**
- 5 **(iii) credit score;**
- 6 **(iv) assets;**
- 7 **(v) liabilities; or**
- 8 **(vi) employment history.**
- 9 **(f) As used in this article, personal information is "encrypted"**
- 10 **if the personal information:**
- 11 **(1) has been transformed through the use of an algorithmic**
- 12 **process into a form in which there is a low probability of**
- 13 **assigning meaning without use of a confidential process or**
- 14 **key; or**
- 15 **(2) is secured by another method that renders the personal**
- 16 **information unreadable or unusable.**
- 17 **(g) As used in this article, personal information is "redacted" if**
- 18 **the personal information has been altered or truncated so that not**
- 19 **more than the last four (4) digits of:**
- 20 **(1) a Social Security number;**
- 21 **(2) a driver's license number;**
- 22 **(3) a state identification number; or**
- 23 **(4) an account number;**
- 24 **are accessible as part of the personal information.**
- 25 **Sec. 13. Whenever a person licensed under this article, or a**
- 26 **person required to be licensed under this article has possession of**
- 27 **funds belonging to others, including money received by or on**
- 28 **behalf of a prospective borrower, the person licensed under this**
- 29 **article, or required to be licensed under this article, shall:**
- 30 **(1) upon request of the prospective borrower, account for any**
- 31 **funds handled for the prospective borrower;**
- 32 **(2) follow any reasonable and lawful instructions from the**
- 33 **prospective borrower concerning the prospective borrower's**
- 34 **funds; and**
- 35 **(3) return any unspent funds of the prospective borrower to**
- 36 **the prospective borrower in a timely manner.**
- 37 **Sec. 14. Each loan broker licensee shall submit, at such times as**
- 38 **the department may require, reports of condition to:**

1 (1) the department; and

2 (2) the Nationwide Mortgage Licensing System and Registry.

3 A report required by this section shall be in the form and contain
4 the information the department may require.

5 Sec. 15. (a) A person shall not, in connection with a contract for
6 the services of a loan broker, either directly or indirectly, do any
7 of the following:

8 (1) Employ any device, scheme, or artifice to defraud.

9 (2) Make any untrue statements of a material fact or omit to
10 state a material fact necessary in order to make the
11 statements made, in the light of circumstances under which
12 they are made, not misleading.

13 (3) Engage in any act, practice, or course of business that
14 operates or would operate as a fraud or deceit upon any
15 person.

16 (4) Collect or solicit any consideration, except a bona fide
17 third party fee, in connection with a residential mortgage loan
18 until the residential mortgage loan has been closed.

19 (5) Receive any funds if the person knows that the funds were
20 generated as a result of a fraudulent act.

21 (6) File or cause to be filed with a county recorder any
22 document that the person knows:

23 (A) contains:

24 (i) a misstatement; or

25 (ii) an untrue statement;

26 of a material fact; or

27 (B) omits a statement of a material fact that is necessary to
28 make the statements that are made, in the light of
29 circumstances under which they are made, not misleading.

30 (7) Knowingly release or disclose the unencrypted, unredacted
31 personal information of one (1) or more borrowers or
32 prospective borrowers, unless the personal information is
33 used in an activity authorized by the borrower or prospective
34 borrower under one (1) or more of the following
35 circumstances:

36 (A) The personal information is:

37 (i) included on an application form or another form; or

38 (ii) transmitted as part of an application process or an

1 enrollment process.

2 (B) The personal information is used to obtain a consumer
3 report (as defined in IC 24-5-24-2) for an applicant for
4 credit.

5 (C) The personal information is used to establish, amend,
6 or terminate an account, a contract, or a policy, or to
7 confirm the accuracy of the personal information.

8 However, personal information allowed to be disclosed under
9 this subdivision may not be printed in whole or in part on a
10 postcard or other mailer that does not require an envelope, or
11 in a manner that makes the personal information visible on an
12 envelope or a mailer without the envelope or mailer being
13 opened.

14 (8) Engage in any reckless or negligent activity allowing the
15 release or disclosure of the unencrypted, unredacted personal
16 information of one (1) or more borrowers or prospective
17 borrowers. An activity described in this subdivision includes
18 an action prohibited by section 12(d) of this chapter.

19 (9) Knowingly bribe, coerce, or intimidate another person to
20 corrupt or improperly influence the independent judgment of
21 a real estate appraiser with respect to the value of any real
22 estate offered as security for a residential mortgage loan, as
23 prohibited by section 3 of this chapter.

24 (10) Violate any of the following:

25 (A) The federal Truth in Lending Act (15 U.S.C. 1601 et
26 seq.).

27 (B) The federal Real Estate Settlement Procedures Act (12
28 U.S.C. 2601 et seq.), as amended.

29 (C) The federal Equal Credit Opportunity Act (15 U.S.C.
30 1691 et seq.).

31 (D) Any other federal law or regulation concerning
32 residential mortgage lending.

33 (b) A person who commits an act described in subsection (a) is
34 subject to sections 4, 8, 9, and 10 of this chapter.

35 Sec. 16. (a) A person licensed or required to be licensed as a loan
36 broker under this article shall not employ a person to act as a
37 mortgage loan originator unless the person is licensed as a
38 mortgage loan originator or a principal manager under this article.

1 **The license of a mortgage loan originator or a principal manager**
 2 **is not effective during any period in which the mortgage loan**
 3 **originator or principal manager is not employed by a loan broker**
 4 **licensed under this article.**

5 **(b) A person licensed or required to be licensed as a loan broker**
 6 **under this article shall not operate any principal or branch office**
 7 **of a loan brokerage business without employing a licensed**
 8 **principal manager at that location.**

9 **(c) The licensed principal manager employed at a principal or**
 10 **branch office of a loan brokerage business shall supervise all**
 11 **employees at that location. If a licensed mortgage loan originator**
 12 **works from a location that is not a principal or branch office of a**
 13 **loan brokerage business, the mortgage loan originator shall be**
 14 **supervised by the principal manager employed at the principal or**
 15 **branch office at which the mortgage loan originator's loan files are**
 16 **sent.**

17 **(d) An individual that acts solely as a loan processor or**
 18 **underwriter shall not represent to the public through:**

19 **(1) advertising; or**

20 **(2) other means of communicating or providing information,**
 21 **including the use of business cards, stationery, brochures,**
 22 **signs, rate lists, or other promotional items;**

23 **that the individual may or will perform mortgage loan origination**
 24 **activities or otherwise act as a mortgage loan originator.**

25 **Sec. 17. (a) An appeal may be taken by:**

26 **(1) any person whose application for an initial or a renewal**
 27 **license under this article is granted or denied, from any final**
 28 **order of the department concerning the application;**

29 **(2) any applicant for initial or renewed licensure as a**
 30 **principal manager or a mortgage loan originator, from any**
 31 **final order of the department affecting the application;**

32 **(3) any person against whom a civil penalty is imposed under**
 33 **section 8 of this chapter, from the final order of the**
 34 **department imposing the civil penalty; or**

35 **(4) any person who is named as a respondent, from any final**
 36 **order issued by the department under section 4 or 5 of this**
 37 **chapter;**

38 **to the Marion circuit court or to the circuit or superior court of the**

1 county where the person taking the appeal resides or maintains a
2 place of business.

3 (b) Not later than twenty (20) days after the entry of the order,
4 the department shall be served with:

5 (1) a written notice of the appeal stating the court to which the
6 appeal will be taken and the grounds upon which a reversal of
7 the final order is sought;

8 (2) a demand in writing from the appellant for a certified
9 transcript of the record and of all papers on file in the
10 department's office affecting or relating to the order; and

11 (3) a bond in the penal sum of five hundred dollars (\$500) to
12 the state of Indiana with sufficient surety to be approved by
13 the department, conditioned upon the faithful prosecution of
14 the appeal to final judgment and the payment of all costs that
15 are adjudged against the appellant.

16 (c) Not later than ten (10) days after the department is served
17 with the items listed in subsection (b), the department shall make,
18 certify, and deliver to the appellant the transcript, and the
19 appellant shall, not later than five (5) days after the date the
20 appellant receives the transcript, file the transcript and a copy of
21 the notice of appeal with the clerk of the court. The notice of appeal
22 serves as the appellant's complaint. The department may appear
23 and file any motion or pleading and form the issue. The cause shall
24 be entered on the trial calendar for trial de novo and given
25 precedence over all matters pending in the court.

26 (d) The court shall receive and consider any pertinent oral or
27 written evidence concerning the order of the department from
28 which the appeal is taken. If the order of the department is
29 reversed, the court shall in its mandate specifically direct the
30 department as to the department's further action in the matter.
31 The department is not barred from revoking or altering the order
32 for any proper cause that accrues or is discovered after the order
33 is entered. If the order is affirmed, the appellant is not barred after
34 thirty (30) days from the date the order is affirmed from filing a
35 new application if the application is not otherwise barred or
36 limited. During the pendency of the appeal, the order from which
37 the appeal is taken is not suspended but remains in effect unless
38 otherwise ordered by the court. An appeal may be taken from the

1 judgment of the court on the same terms and conditions as an
2 appeal is taken in civil actions.

3 Sec. 18. A loan broker agreement that is delivered or required
4 to be delivered by a person licensed or required to be licensed
5 under this article to a borrower or prospective borrower must
6 contain:

7 (1) the license number of the loan broker; and

8 (2) the license number of each:

9 (A) mortgage loan originator; or

10 (B) principal manager;

11 who had contact with the file.".

12 Page 35, delete lines 2 through 42, begin a new paragraph and
13 insert:

14 "SECTION 23. IC 23-2-5 IS REPEALED [EFFECTIVE JANUARY
15 1, 2011].

16 SECTION 24. [EFFECTIVE UPON PASSAGE] (a) As used in this
17 SECTION, "commissioner" refers to the securities commissioner
18 appointed under IC 23-19-6-1.

19 (b) As used in this SECTION, "department" refers to the
20 department of financial institutions.

21 (c) As used in this SECTION, "director" refers to the director
22 of the department of financial institutions appointed under
23 IC 28-11-2-1.

24 (d) The definitions in IC 23-2-5-3, as amended by this act, apply
25 throughout this SECTION.

26 (e) The commissioner and the director shall cooperate to
27 facilitate the transfer of responsibility for the licensing and
28 regulation of:

29 (1) loan brokers;

30 (2) mortgage loan originators, and

31 (3) principal managers;

32 from the commissioner to the department effective January 1,
33 2011, as required by this act.

34 (f) The commissioner and the director shall issue joint written
35 guidelines concerning any legislation recommended for
36 introduction during the 2010 session of the general assembly to
37 facilitate the transfer described in subsection (e). The guidelines
38 issued under this subsection shall be submitted to the following not

- 1 **later than November 1, 2009:**
- 2 **(1) The legislative council.**
- 3 **(2) The members of the senate standing committee that has**
- 4 **jurisdiction over legislation concerning financial institutions.**
- 5 **(3) The members of the house of representatives standing**
- 6 **committee that has jurisdiction over legislation concerning**
- 7 **financial institutions.**
- 8 **The report to the legislative council required by this subsection**
- 9 **must be in an electronic format under IC 5-14-6.**
- 10 **(g) This SECTION expires July 1, 2011.**
- 11 SECTION 25. [EFFECTIVE JANUARY 1, 2011] **(a)**
- 12 **Notwithstanding the repeal of IC 23-2-5 on January 1, 2011, by this**
- 13 **act, the loan broker regulation account created by IC 23-2-5-7,**
- 14 **before its repeal by this act, continues in existence after December**
- 15 **31, 2010, and may be used by the department of financial**
- 16 **institutions for the regulation of loan brokers, mortgage loan**
- 17 **originators, and principal managers under IC 24-4.2, as added by**
- 18 **this act.**
- 19 **(b) This SECTION expires January 1, 2012.**
- 20 SECTION 26. **An emergency is declared for this act."**
- 21 Delete pages 36 through 37.
- 22 Renumber all SECTIONS consecutively.
- (Reference is to HB 1646 as introduced.)

and when so amended that said bill do pass.

Representative Bardon